Supreme Court, U.S.
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85-818 (2)

IN THE UNITED STATES SUPREME COURT

CASE NO.

MANNIE BLACK and MOSES WILLIAMS,
Petitioners/Appellants

vs.

FREEMAN T. WYCHE,
Respondent/Apellee

On Writ of Certiorari to the District Court
of Appeal of Florida for the Third District

RESPONDENT BRIEF IN OPPOSITION OF PETITION FOR WRIT OF CERTIORARI

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MOSES WILLIAMS and MANNIE BLACK v. FREEMAN T. WYCHE (Fla. 3rd DCA 1983) 440 So.2d 364

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MOSES WILLIAMS and MANNIE BLACK v. FREEMAN T. WYCHE, 472 So.2d 1195 (Fla. 3rd DCA 1985)

SYNANON FOUNDATION, INC. v. CALIFORNIA 444 U.S. 1307 (1979)

OTHER AUTHORITIES:

ADAM AND HANLON, JONES v. WOLF: CHURCH ANTONOMY AND THE RELIGION CLAUSE WITH THE FIRST AMENDMENT 1128 U Pa. L. Rev. 1291, 1292, (1980)

STATEMENT OF THE CASE

On March 31, 1983, Appellants filed a Verified Complaint for Injunctive Relief, Declaratory Judgement and Damages. [1]On April 4, 1983, the Appellee filed a Sworn Counterclaim for Injunction and Other Relief (App. A). [2]An Emergency Hearing on the respective parties Motion for Preliminary Injunction was held at which time the Trial Court ordered the Appellants to release all church property. (App. B). The Trial Court also ordered an election of Elders of the church, by majority of the eligible members of the LIBERTY CITY CHURCH OF CHRIST, and to determine who would serve as Minister. Consistent with the Court's Order a meeting was held, following notice to all members, in which the majority of the Church membership sustained its original decision to retain the Appellee/Minister and to dismiss Appellants/Elders.

The principals in the case at bar serve in their respective positions as servants of the LIBERTY CITY CHURCH OF CHRIST is not governed by a "Mother Church" and as such is an independent Church body. The phrase "Church of Christ" represents a commonality between countless independent churches that recognize the doctrine taught by the New Testament of the "Church of Christ." Any individual, whether Elder, Minister, or otherwise, serving in an authoritative or representative capacity is appointed to such position by the majority of the respective Church of Christ. Consequently and removal from such a position is dictated by the majority membership. The Elders do not in and among themselves constitute a "rule making body." The "rules of order" are dictated by the New Testament of the Church of Christ and are implemented by the Minister and Elders conditioned on the approval or disapproval of the church membership represented by a majority voice.

1 Reference to Appellants' Appendix is followed by "Appellants' App". and page number.

2 Reference to the Appendix in Appellees Brief is by the abbreviation "App".

This case arose through a dispute between Apellants, former Elders of the Church, and Appelle, the Minister. The Elders attempted to terminate the Minister. The Minister's continued employment was predicated on the action by the majority of the Church members. The action of the membership was voiced through the Elders, whose appointment and tenure was predicated on the voice of the majority of the church membership. Consequently, the Elders of the Church were not empowered with unilateral authority to terminate the Minister. Any termination without majority membership approval was without effect.

Action was taken by the Minister and the members of the Church to dismiss the Appellants as Elders of the Church at a regularly scheduled meeting on March 8, 1983. The Appellee was retained as the Minister. The Appellee and his family have continued to reside in the Church's parsonage, pursuant to his tenure as Minister. The request by the Appellants to remove the Appellee from the parsonage was ultra vires in nature and without consent of the majority of the Church members. Furthermore, any action taken by or against the Appellee, with respect to the issues herein, was inputed to his family.

Any and all authority granted to the Appellants as Elders of the Church to handle the Church's financial affairs was subject to majority control. Consequently, the Appellants were without unilateral authority to handle those affairs as they saw fit. When the Church members removed the Appellants as Elders of the Church, any and all authority over the financial affairs by the Elders was also taken from them.

The District Court of Appeal of the Third District of Florida affirmed the Trial Court's decision in favor of the Appellee per curiam. MOSES WILLIAMS and MANNIE BLACK v. FREEMAN T. WYCHE, (Fla. 3rd DCA 1983) 440 So. 2d 364. The Appellants then sought review of that decision by the United States Supreme Court by asserting that this Court had jurisdiction over this matter invoked under Title 28, United States Code, Section 28.MOSES WILLIAMS and MANNIE BLACK v. FREEMAN T. WYCHE, 104 S. Ct. 2145, (1984). Appellants alleged that the Trial Court's Order was a violation of the First and Fourteenth Amendments to the United States Constitution,as amended. This Court dismissed the appeal for want of jurisdiction.

Subsequent to this Court's 1984 decision, the Appellee filed a Motion for Summary Judgment and Amendment to Motion for Summary Judgment (App. C.) The substance of the Motion was based on the what had become the "law of the case" to wit: that the vote by the majority of the membership of the LIBERTY CITY CHURCH OF CHRIST, an independent congregational church, confirming the Appelle's position as Minister and dismissing the Appellants as Elders was a binding decision. Furthermore, the trial court's directive requiring such a vote was legally proper. By order dated November 28, 1984, the trial court sustained the Appellee's Motion for Summary Judgment. (Appellants App. 14-16). Subsequent to issuance of the Summary Judgment, the Appellants took a second appeal to the Third District Appellate Court of Florida seeking the review of the trial court's latest decision. Once again the Florida Appellate Court sustained the trial court's ruling in a per curiam affirmed decision. MOSES WILLIAMS and MANNIE BLACK v. FREEMAN T. WYCHE, 472 So. 2d 1195 (Fla.3rd DCA 1985). More significantly the Florida Appellate Court issued its decision in the absent of oral argument. Abusing the legal process, the Appellants now ask this Court to review again the very issue that has been disposed of five times, and adverse to their interest, to wit, twice by the trial court, twice by the Third District Appeals Court of Florida and more significantly once by this Court in its earlier ruling. Again the substance of their argument is that the First and Fourteenth Amendments to the United States Constitution prohibit the State Court from interferring in the matter at hand.

ARGUMENT

THE SUBJECT APPEAL SHOULD BE SUMMARILY DISMISSED BASED ON THE LEGAL PRINCIPLE OF RES JUDICATA

In their first appeal to this Court WILLAMS v. WYCHE 104 S. Ct. 2145 (1984) supra, the Appellants couched the issue as follows:

> WHETHER THE FIRST AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION PROHIBIT A STATE COURT FROM OVERRIDING THE DECISIONS OF THE GOVERNING BOARD OF A NON-INDEPENDENT CHURCH IN ITS SELECTION OF MINISTER, REQUIRING THE RELIGIOUS INSTITUTION TO HOLD AN ELECTION OF THE CONGREGATION IN ORDER TO DETERMINE THE LEADERSHIP AND CONTROL OF THE INSTITUTION AND OF THE CHURCH PROPERTY

In the current appeal the Appellants present the following issue for resolution by the Court,

> WHETHER THE FIRST AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION PROHIBIT A STATE COURT FROM REJECTING DECISIONS OF THE HIGHEST GOVERNING BODY OF A CHURCH ON QUESTIONS OF CHURCH DOCTRINE, LAW AND THE CONTROL

OF CHURCH PROPERTY, BY REQUIRING AND UPHOLDING AN ELECTION TO RESOLVE THE DISPUTE BY MAJORITY RULE, WHERE THE CHURCH, THOUGH GOVERNED WITHIN THE CONGREGATION, IS PART OF A BODY OF CHURCHES WHICH SUBSCRIBE TO A FORM OF CHURCH GOVERNMENT WHICH VESTS AUTHORITY IN CERTAIN CHURCH OFFICERS AND PROHIBITS THE RESOLUTION OF DISPUTES BY VOTING.

As is readily apparent the arguments are synomous. The thrust of the entire litigation evolves around the central issue of:

WHETHER THE ELDERS OR A MAJORITY OF THE CONGREGATION OF AN INDEPENDENT CONGREGATIONAL CHURCH HAVE THE FINAL AUTHORITY TO DETERMINE THE TENURE OF THE MINISTER.

From the filing of their initial complaint, where the Appellants sought to have the Appellee remove as Minister and for him and his family to relinquish possession of the church parish and other church property, to this their fourth appeal, the Appellants have been on a forum shopping expedition hoping to obtian relief. On five (5) previous occasions, including one by this court, the ruling has been that the Appellants' position is unfounded.

Clearly, this appeal should be dismissed under the well established and time honored doctrine of res juicata. AMEY, INC. v. GULF ABSTRACT AND TITLE INSURANCE 758 F. 2d 1486. The

appeal herein is no different in the substance of issues, the identity of the parties, the cause of action or capacity of the parties, than the previous appeals of the initial complaint filed by the Appellants. The previous denial of certiorari by this court is dispositive of the issues currently before this court. Once a party has had the opportunity to litigate a matter in an action, he should not be permitted to litigate the same issue again to the harrassment of his opponent.

THE STATE HAS A LEGITIMATE INTEREST IN RESOLVING
THE CHURCH'S PROPERTY DISPUTE AND A CIVIL COURT
IS A PROPER FORUM FOR RESOLUTION OF PROPERTY DISPUTES.

The Appellants are relying on the following unfounded principles (1) the First and Fourteenth Amendments of the U.S. Constitution prohibit the trial court from interferring in the affairs of a congregational church and (2) that they as Elders are the hierarchy of the Church and ecclesiastical authority of the LIBERTY CITY CHURCH OF CHRIST.

The First and Fourteenth amendments to the U.S. Constitution prohibits the state civil courts from exercising juridiction over purely ecclesiastical matters involved in church related disputes, but, it does nof forbid the courts from adjudicating property rights of the church of of the members, so long as such rights can be determined by the application of neutral principles of law developed

for use in all property disputes and which can be applied without "establishing" a church. JONES v. WOLF, 443 US 595, (1979). The Appellants even admit that their position as Elders were in the nature of employment. (Appellants App. 21). Their employment too was subject to the will of LIBERTY CITY CHURCH OF CHRIST congregation.

Contractional rights are "property rights" within the meaning of the foregoing premise. The tenure of the Appellee Wyche is clearly a property right issue who's dispute was properly resolved by the trial court and the subsequent "concurring" appellate decisions.

In SYNANON FOUNDATION, INC. v.CALIFORNIA, 444 U.S. 1307 (1979), Justice Rehquist stated that state courts could resolve property disputes, even when hierarchial church organizations were involved, in accordance with neutral principles of state property law. The Synanon Foundation case dealt with the Appellant's assertion that they as a church, were entitled to different treatment under the First and Fourteenth amendments to the U.S. constitution. The case at bar involves resolution of the Church's property dispute between the Appellants/Elders who have asserted that they are the hierarchy order this Church and the Appelle, the Minister who represents the Church's members. To the contrary, the Appellants do not constitute the hierarchy of the Church or an ecclesiastical authority. As the Appellants admit their former position as Elders was in the nature of employment. (Appellant App. 21). Obviously the employment was initiated from the voice of the congregation and not from the "mystical" authority or hierarchy authority of the Church of Christ.

The approach to church property litigation has evolved in response to PRESBYTERIAN CHURCH IN THE UNITED STATES v. MARY ELIZABETH BLUE HULL MEMORIAL PRESBYTERIAN CHURCH, 393 U.S. 440 (1969). That case involved a property dispute between a national Presbyterian organization and local churches of that organization. On remand, the Court adopted what is now known as the neutral principle of law method for resolving church property disputes.
The court examined the deeds of the property in question, as well as all documents relating to the matter, and awarded the property on the basis of legal title.

The other property involved in the case at bar is the Chruch's financial and parsonage and not any property interest of he Appellant. The Appellants, as the Elders, were entrusted in their position to be responsible for the church's funds. The parsonage is the home of the Minister/Appellee, during his tenure with the Church. The majority of the church's members voted to remove the Appellants as the Elders and to retain the Appellee as the Minister. This indicates a presumptive rule of majority representation.

In JONES v. WOLF, supra, there was a church property dispute arising from a schism in a local church affiliated with a hierarchial church organization in which the United States Supreme Court remanded the case for further proceedings where both the state trial court and the state's highest court in reaching their decision in favor of he majority fraction, applied a neutral principels of law approach which was developed in cases involving property disputes, without alluding to the fact that the local church itself was divided into fractions. In the case at bar, both the state trial court and the state's appellate court were cognizant of the fact that the church is split into two fractions because of the nature in which the case arose. The Appellants, as the Elders, are attempting to control the Church's property even though the majority of the church members, represented by the Appellee, voted the Elders from their position. The substance of the dipsute herein does not focus on a religious issue, but a simple issue of control of property owned by an independent congregational church body and the property rights created by the Appellee's employment tenure. The state's adopted presumptive rule of majority representation is consistent with both the First Amendment and the neutral principles analysis. JONES, supra.

Generally, there are two (2) distinct forms of church organization, congregational and hierarchial. A general summary of these forms of government is found in footnote 6 of ADAMS AND HANLON, JONES v. WOLF: CHURCH ANTONOMY AND THE RELIGION CLAUSE WITH THE FIRST AMENDMENT, 128 U. Pa. L. Rev. 1291, 1292 (1980) which provides;

> "A HIERARCHIAL ORGANIZATION HAS BEEN DEFINED BY THE SUPREME COURT AS A GENERAL ORGANIZATION OF CHURCHES HAVING A SIMILAR FAITH AND DOCTRINE WITH A COMMON RULING CONVOCATION OR ECCLESIASTICAL HEAD."

Such church includes the Episcopal and Presbyterial form of government. The article further and more significantly points out,

> IN CONTRAST TO THE HIERARCHICAL FORM OF ORGANIZATION. THE CENTRAL CHARACTERISTIC OF A CONGREGATIONAL POLITY IS THE ANTONOMY OF EACH LOCAL ENTITY. WHILE CONGRETIONAL CHURCHES SOMETIME AFFLIATE WITH OTHER RELIGIOUS ORGANIZATIONS, THEY GENERALLY RECOGNIZE NO SUPERIOR AUTHORITY OVER THE LOCAL ORGANIZATION. EXAMPLE OF A CONGREGATIONAL POLITY ARE PROVIDED BY THE NUMEROUS BAPTIST BODIES, THE JEWISH CONGREGATION, THE CHURCH OF CHRIST AND THE QUAKERS." (emphasis added)

The LIBERTY CITY CHURCH OF CHRIST is a congregational church, being completely autonomous and governed by majortiy rule. There being no hierarchial constitution or regulation governing the right of the church to contract, and no church asjudicatorian having jurisdiction to determine questions concerning such contracts, the controversy regarding Minister Wyche's employment and his use of church owned property can be determined solely by the application of neutral principles of law. Hence, the issue in this case is properly dispose of by a majortiy vote of the LIBERTY CITY CHURCH OF CHRIST.

The Appellants have asserted that as a matter of fact and as matter of church doctrine that they are the ecclesiastical authority and hierarchy head of the Church of Christ. Furthermore, this assertion makes the Church of Christ similar to the traditional Presbyterian and
Episcopal churches that are clearly controlled by hierarchy order. To take the position that the Elders are the ecclesiastical authority and can only remove themselves on their initiative, defeats the whole concept upon which a congregational church is based. (Appellant App. 40-54) To run Appellants positions to its full gambit leads to the unreasonable conclusion that the members of the church, and is particular the majority, have no voice in the church's operation. This attitude would allow an Elder to abuse his fiduciary position without the check and balance system offered in a con-

gregational setting. Furthermore, a mere assertion that the Appellants are hierarchial authorities flies in the face of the established rule that the Church of Christ is congregational in nature. The LIBERTY CITY CHURCH OF CHRIST is no different.

The trial court's initial decision requiring the LIBERTY CITY CHURCH OF CHRIST membership to hold the "court order" meeting was clearly consistent with the application of the neutral principles of law. The members elected to retain the Appellee as Minister and to remove the Appellants as Elders.

CONCULSION

All of the Churchs of Christ have the congregational system of government. They are independent sovereignties and exclusively self-governing units. Hence it must follow that a majority of the membership, in any given congregation of the Church's of Christ, is entitled to control the church property and direct and control the administrative affairs of the congregation including the employment of a Minister.

The Court should disregard the Appellants' attempt to cloud the issues by characterizing the dispute as one over religious doctrine and property ownership. The true issue is whether the majority of the members of the LIBERTY CITY CHURCH OF CHRIST have the right to decide who is authorized to implement the doctrine of he Church and lead the Church, oversee its daily operation and to be entrusted with the fiduciary responsibility of protecting Church owned property.

The Petition herein should be dismissed for a want of a substantial Federal question and on the principal of res judicate. Furthermore, the opinion of the District Court of Appeal for the Third District of Florida in applying the neutral principles of law analysis, which was consistent with the First and Fourteenth Amendments to the United States Constitution, should be affirmed.

Respectfully submitted,

LAW OFFICES
McCRARY, VALENTINE & MAYS

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that (3) copies of the foregoing Brief was mailed to: LISA BENNETT, Counsel for Petitioners, 304 Palermo Avenue, Coral Gables, Florida 33134 on this day of [illegible] 11 1985, 1985.

By Jesse J McCrary, Jr, ESQ

JESSE J. McCRARY, JR., ESQ.

APPENDIX A

IN THE CIRCUIT COURT OF THE 11TH JUDICAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

CASE NUMBER: 83-11427

MANNIE BLACK,
Plaintiff
MOSES WILLIAMS,
R.V. WALKER, and
COMPANY
Counter/Defendants

vs.

MINISTER FREEMAN T. WYCHE,
Defendent
MINISTER FREEMAN T. WYCHE
On Behalf of
LIBERTY CITY CHURCH OF CHRIST,
Counter/Plaintiff.

SWORN COUNTER-CLAIM FOR INJUNCTIVE AND OTHER RELIEF

COMES NOW, the Defendent/Counter-Defendant, MINISTER FREEMAN T. WYCHE, on behalf of LIBERTY CITY CHURCH OF CHRIST, by and through its undersigned Attorney and files this its Sworn Counter-Claim for Injunction and Other Relief against Counter-Plaintiffs, MOSES WILLIAMS, R. V. WALKER and COMMERCIAL BANK AND TRUST COMPANY and COMMERCIAL BANK AND TRUST COMPANY and alleges:

GENERAL ALLEGATIONS

(1) That the LIBERTY CITY CHURCH OF CHRIST is a non-profit entity doing business at 1263 N.W. 67 Street, Miami Dade County, Florida (hereinafter referred to as "Church"). MINISTER FREEMAN T. WYCHE is the Minister of said Church and its Chief Operating Officer.

(2)That the COMMERCIAL BANK AND TRUST COMPANY is a Florida Banking Institution incorporated under Florida Law

and is doing business in Dade County, Florida at 9301 N.W. 7th Avenue, Miami, Florida (hereinafter referred to as "Bank").

(3)The MOSES WILLIAMS is a resident of Miami, Dade County, Florida and over the age of eighteen (18) years and sui juris.

(4)That R. V. WALKER is a resident of Opa Locka, Dade County, Florida and over the age of eighteen (18) years and sui juris.

(5)That MOSES WILLIAMS serves in the capacity as Treasurer of the Church and R. V. WALKER served in the capacity as Secretary.

(6)That the Church maintained a checking account with the Bank, account number 000-6950-000 (hereinafter referred to as "Account").

(7)That R. V. WALKER and MOSES WILLIAMS were given the fiduciary responsibility, exclusive of other members of the Church or any other individual, the authority to endorse all checks issued on the Church Account specified herein and to handle other Church financial matters such as savings, Certificate of Deposits and authority of bookkeeping, etc.

(8)That on or about March 10, 1983, R. V. WALKER and MOSES WILLIAMS signed a check on the Account herein in the amount of SEVENTEEN THOUSAND EIGHT HUNDRED FIFTY-FIVE DOLLARS AND EIGHTY-EIGHT ($17,855.88) CENTS. Said check was paid to the order of LIBERTY CITY CHURCH OF CHRIST and was withdrawn from the Account for the specific purpose of closing the same.

(9)That MINISTER FREEMAN T. WYCHE discovered that the church Account has been closed on March 16, 1983, which was further confirmed by the Bank Statement dated March 11, 1983.

(10)That R. V. WALKER and MOSES WILLIAMS unlawfully and maliciously closed said Account without the expressed or implied consent of MINISTER WYCHE or by any other resolution fo the members of the Chruch.

(11)That MINISTER WYCHE immediately approached MOSES WILLIAMS AND R. V. WALKER to determine why said Account had been closed and as to the wherabouts of the funds deposits therein.

(12)That after failing to get an adequate response from R. V. WALKER and MOSES WILLIAMS as to why said Account had

been closed, MINISTER WYCHE was informed, however, that the funds had been transferred to the individual account of MOSES WILLIAMS and R. V. WALKER located at the Bank.

(13)That an official at the Bank informed MINISTER WYCHE that the Church funds had in fact been closed. The Bank official failed to provide MINISTER WYCHE with further information on the grounds that MOSES WILLIAMS, R. V. WALKER, and G. MANNIE BLACK were the only individuals authorized to endorse the Church's checks at the Banks and otherwise handle the Church's Account or that MINISTER WYCHE was not an authorized individual to sign on the Account.

(14)The Church passed a resolution authorizing new individuals to endorse and execute on a new account to be established by the Church at the Bank and tendered the same to an official of the Bank; however the BANK has refused to accept said resolution on the grounds that the Account was closed.

(15)That personal demand and mail demand by certified receipt has been served on R. V. WALKER and MOSES WILLIAMS, requesting that they return the subject funds to the Church's account and/or to MINISTER WYCHE; however to date they have refused the Church's request.

(16)That the Bank by refusing to provide the Church with adequate information to determine the specific account in which the funds are deposited, to disclose the amount of said funds, and additional other pertinent information concerning said funds, continues to assist the Counter-Defendants, R. V. WALKER and MOSES WILLIAMS, in the continued unlawful conversion of the Church's funds.

(17)That in addition to the Checking Account mentioned herein, Counter/Defendant, R. V. WALKER and MOSES WILLIAMS are also responsible for the Certificates of Deposit (hereinafter referred to as "C.Ds.") that are located at the Bank. Said C.Ds. are believed to total an approximate amount of TWELVE THOUSAND ($12,000.00) DOLLARS.

(18)That despite numerous requests by MINISTER WYCHE on behalf of the Church, the Defendants, R. V. WALKER and MOSES WILLIAMS have failed to disclose with respect to the amount and any other pertinent information concerning said C.Ds.

(19)That the Church has reason to believe that said C.Ds. have been unlawfully converted to the account of R. V. WALKER and MOSES WILLIAMS, or otherwise misappropriated from the

church's C.Ds. account by R. V. WALKER and MOSES WILLIAMS. COUNT I— INJUNCTION

(20)That this is and action for Injunctive Relief.

(21)That Defendant/Counter-Plaintiff adopts and realleges the allegations contained in Paragraphs One (1) through Twenty (20).

(22)That the church has continued to incur debts and other obligations that cannot be satisfied due to the closing of the Church's Checking Account and the unauthorized transferring of said funds therein by the Counter-Defendants to disclose any information concerning the Certificates of Deposits.

(23)That the Church believes that the Counter-Defendants will continue to dissipate the church's funds, unless immediate action is taken to demand the return of the subject funds an accounting of the same.

(24)That unless said funds are returned immediately to the Church and an immediate accounting of the same is made, it will suffer irreparable loss and damages and may be forced to close its doors.

(25)That the Plaintiff is currently suffering irreparable loss and damages.

(26)That there is absolutely no adequate remedy of law for which the church can avail itself to.

(27)That Counter-Plaintiff request a Temporary Restraining Order be issued against the Counter-Defendants, COMMERCIAL BANK AND TRUST COMPANY, R. V. WALKER and MOSES WILLIAMS,without Notice enjoining from releasing, transferring or otherwise disposing of funds, which funds are currently in Counter-Defendants' possession.

If Counter-Plaintiff is required to give Notice of Application for said Temporary Restraining Order, it would cause a delay, Plaintiff will continue to suffer the irreparable damages stated herein.

(28)That Counter-Plaintiff has retained the firm of JESSEE J. McCRARY, JR., P. A. to represent it in this matter and has agreed to pay the firms a reasonable attorney's fee. Plaintiff is entitled to attorney's fee consistent with Florida Statute 57.105.

WHEREFORE, Defendants/Counter-Plaintiff prays as follows:

(a)That a Temporary Restraining Order be issued without Notice restraining the Counter-Defendants, COMMERCIAL BANK AND TRUST COMPANY, R. V. WALKER and MOSES WILLIAMS

from releasing, transferring or otherwise disbursing Church funds detailed herein.

(b)That a hearing be had forthwith in Plaintiff's Application for a Preliminary Injunction.

(c)That a Preliminary Injunction be issued enjoining Counter-Defendants, COMMERCIAL BANK AND TRUST COMPANY, R. V. WALKER and MOSES WILLIAMS from releasing, tranferring or otherwise disbursing Church funds to individuals not authorized by the church.

(d)That on final hearing, Counter-Defendants, COMMERCIAL BANK AND TRUST COMPANY, R. V. WALKER and MOSES WILLIAMS be enjoined from releasing, transferring or otherwise disbursing Church funds to individuals not authorized by the Church.

(e)That damages, both compensatory and punitive, be assessed against Counter-Defendant, COMMERCIAL BANK AND TRUST COMPANY, R. V. WALKER and MOSES WILLIAMS for all damages caused by Defendants' actions.

(f)That Counter-Plaintiff be awarded damages as aforesaid, interest, costs and attorney's fees.

(g)That this Court order such additional relief as may be just and equitable.

COUNT II - CONVERSION

(29)This is an action for conversion and damages in excess of FIVE THOUSAND ($5,000.00) DOLLARS.

(30)Plaintiff adopts and re-alleges the allegations contained in Paragraphs One (1) through Twenty-Nine (29) and further alleges:

(31)That the acts complained of in the Complaint herein constitute conversion for which the Defendents, COMMERCIAL BANK AND TRUST COMPANY, R. V. WALKER and MOSES WILLIAMS are responsible for damages caused by their action.

WHEREFORE, Counter-Plaintiff prays:

(a)That damages, both compensatory and punitive, be assessed against the Defendants' actions.

(b)That Counter-Plaintiff be awarded damages as foresaid, interest, cost and attorney's fees.

(c)That this Court order such additional relief as may be just and equitable.

COUNT III - ACCOUNTING

(32)That this is an action for accounting as to all Church funds

and financial matters for which the counter-Defendants, R. V. WALKER and MOSES WILLIAMS are privity to or otherwise have control and authority over with damages in excess of FIVE THOUSAND ($5,000.00) DOLLARS.

(33)Counter-Plaintiff adopts and re-alleges the allegations contained in Paragraphs One (1) through Thirty-Two (32) and further alleges:

(34)That in addition to checking account and Certificates of Deposit mentioned herein, the Counter-Defendants, R. V. WALKER and MOSES WILLIAMS held a fiduciary responsibility to maintain the Church's financial records.

(35)That despite many requests by the Counter-Plaintiffs to the Counter-Defendants, R. V. WALKER AND MOSES WILLIAMS to release the financial record and to otherwise disclose information in said records,the Counter-Defendents, R. V. WALKER and MOSES WILLIAMS have failed to disclose said information.

(36)The exact amount contained in the financial records or other information contained therein is unknown to the Plaintiff and cannot be stated herein, that the transactions contained in said records are so voluminous that a correct amount or statement of the nature of the information contained therein cannot be ascertained without an accounting.

WHEREFORE, Counter-Plaintiff prays that:

(a)That the Counter-Defendents, R. V. WALKER and MOSES WILLIAMS be compelled to account for all transactions for which they are responsible as alleged herein.

(b)That said Counter-Defendent be ordered to pay the amount to be due from the Counter-Defendants to the Counter-Plaintiff as a result of the account, including interest.

(c)That Counter-Plaintiff be awarded cost and attorney's fee.

(d)That this Court order such additional relief as may be just and equitable."

MINISTER FREEMAN T. WYCHE

STATE OF FLORIDA)
COUNTY OF DADE)SS

BEFORE ME, the undersigned authority, personally appeared MINISTER FREEMAN T. WYCHE, to me well known to be the person described in and who executed the foregoing Sworn Complaint for Injunction and other Relief, who, upon first duly sworn,deposes and state that he has read the foregoing Sworn Complaint, that the allegations therein are true and correct and that he executed the same for the purposes therein expressed.

WITNESS my hand and official seal at Miami, said County and State, this _____ day of April, 1983.

_____

NOTARY PUBLIC, State of Florida
at Large

My commission expires:

_____

APPENDIX B

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND OR DADE COUNTY, FLORIDA

CASE NUMBER: 83-11427 (12)

MANNIE BLACK,
Plaintiff
MOSES WILLIAMS, Plaintiff
R. V. WALKER and
COMMERCIAL BANK AND TRUST COMPANY,
Counter/Defendants

vs. ORDER

MINISTER FREEMAN T. WYCHE,
Defendant,
MINISTER FREEMAN T. WYCHE
on behalf of
LIBERTY CITY CHURCH OF CHRIST
Counter/Plaintiff.

_____ /

THIS CAUSE having come before this Court on a Verified Complaint for Injunctive Relief, Declaratory Judgement and Damages by the Plaintiffs/Counter-Defendant and a Sworn Counter-Claim for Injunction and other Relief by Defendant/Counter-Plaintiff, MINISTER FREEMAN T. WYCHE, on behalf of the LIBERTY CITY CHURCH OF CHRIST,the Court having heard argument of Counsel and being otherwise fully advised,

IT IS ORDERED AND ADJUDGED

(1)The Plaintiffs'/Counter-Defendent's and Defendants's/Counter-Plaintiff's request for injuctive relief is hereby DENIED.

(2)That the Plaintiffs/Counter-Defendant are directed to return all funds withdrawn from the LIBERTY CITY CHURCH OF CHRIST checking account and money-market account at COMMERCIAL BANK AND TRUST COMPANY to MINISTER FREEMAN T. WYCHE, on behalf of the LIBERTY CITY

CHURCH OF CHRIST. MINISTER WYCHE is hereby directed to deposit said funds into the CHURCH'S account at CAPITAL BANK and to maintain an accounting of the same. The action herein should take place immediately. The CHURCH is further directed attributable to its operation. Attorney's fees and legal expenses are not to be paid out of said funds until further ordered by this Court.

(3)It is further ordered that the CHURCH schedule a meeting of eligible members of the LIBERTY CITY CHURCH OF CHRIST. Said meeting shall include, but not be limited to, the following issues:

(a)Which individual (s) shall continue to serve as elders of the CHURCH.

(b)Which individaul (s) shall serve as minister of the CHURCH.

That said meeting shall be noticed by mail or posted notice. Said notice should include, but not be limited to, time, date, location and purpose of meeting. The minutes of said meeting shall be recorded by a legal stenographer (i.e. Court Reporter).

(4)Supersedeas bonds are hereby DENIED.

DONE AND ORDERED in Chamber at Miami, Dade County, Florida this _____ day of _____ , 1983.

_____

CIRCUIT COURT JUDGE

Copies furnished to:

Commercial Bank and Trust Co.
Ellis Rubin, Esq.
R. V. Walker
Mark A. Valentine, Esq.

APPENDIX C

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NUMBER: 83-11427 (12)

MANNIE BLACK
and
MOSES WILLIAMS,
Plaintiffs/
Counter-Defendants,

and

ROOSEVELT WALKER,
Counter-Defendent,

vs.

MINISTER FREEMAN T. WYCHE,
Defendant/
Counter-Plaintiff.

COMES NOW, the Defendant/Counter-Plaintiff, MINISTER FREEMAN T. WYCHE, by and through his undersigned Counsel and files this his Motion for Summary Judgment and states:

STATEMENT OF CASE

The Plaintiffs/Counter-Defendants initiated the action by filing a Verified Complaint for Injunctive Relief, Declaratory Judgement and Damages. The substance and heart of the three (3) count Complaint lies in the controversy of whether the Plaintiff/Counter-Defendants, as Elders of the LIBERTY CITY CHURCH OF CHRIST, have the power to remove the Defendant/Counter-Plaintiff as Minister of the subject Church. Inherent in this issue and expressly stated in the remaining counts of the Complait are the issues of (1) the respective interest that the parties have in the Church property and (2) whether the Defendant/Counter-Plaintiff's continuous possession of the Church parsonage by him as Minister constitutes conversion. A decision by the Court concerning the initial issue of the Defendant/Counter-Plaintiff's continued employment will be dispositive of the remaining issues concerning the Church property.

UNDISPUTED FACTS

In order for this Court to grant a Motion for Summary Judgement there must not exist a genuine issue of material facts. While the Movant concedes the there are certain issues of fact in dispute, the following issues of facts are those material and necessary for the Court to resolve the Motion Hearing and are facts which are not in dispute. The undisputed facts are as follows:

(1)The Defendant/Counter-Plaintiff, MINISTER FREEMAN T. WYCHE has served as Minister of the LIBERTY CITY CHURCH OF CHRIST since approximately March, 1979.

(2)That prior to his appointment as Minister, the Defendant/Counter-Plaintiff was subjected to a "screening and interviewing" process along with several other candidates.

(3)That the interviews were conducted by several Elders and Officials of the Church, including the Plaintiffs/Counter-Defendants.

(4)That following the completion of the process, the Church officials concluded that MINISTER WYCHE was the proper candidates for the job of Minister.

(5)The appointment of MINISTER WYCHE by the Church officials, including the Plaintiffs/Counter-Defendants, was confirmed by the membership of the membership of the LIBERTY CITY CHURCH OF CHRIST

(6)As Minister of the LIBERTY CITY CHURCH OF CHRIST, MINISTER WYCHE and his family were given the privilege of residing in the Church Parsonage location at 1295 N.W. 67 Street, Miami, Florida, adjacent to the Church and 2406 N.W. 67 Street, Miami, Florida

(7)Since his appointment as Minister, the Defendant/Counter-Plaintiff has resided at the Parsonage with his family and has made no attempt to transfer title and maintain possession contrary to his continued employment as Minister.

(8)That sometime during February, 1983, MINISTER WYCHE was provided with a "Notice of Termination" effective May 31, 1983. The notice was signed by the Elders of the Church, including the Plaintiffs/Counter-Defendants, WILLIAMS and BLACK. The Notice of Termination and effect of the same is the basis for the subject lawsuit.

(9)That on a Tuesday, on or about March 8, 1983, at a regular scheduled business meeting, the Church membership entertained a vote that dismissed the Plaintiffs/Counter-Defendants as Elders of the Church.

(10)That following the Court's Injunction Hearing, the Court ordered that the LIBERTY CITY CHURCH OF CHRIST membership conduct a meeting to determine the continued status of MINISTER WYCHE as Minister and the status of BLACK and WILLIAMS as Elders.

(11)The "Court Ordered Meeting" was held on or about March 28, 1983 and MINISTER WYCHE's position as Minister was confirmed by a majority vote, while BLACK and WILLIAMS were dismissed as Elders by a majority vote.

(12)At the time of the commencement of this action the LIBERTY CITY CHURCH OF CHRIST was not governed by an Article of Incorporation or by laws.

LEGAL ISSUES

WHETHER THE ELDERS, PLAINTIFF/COUNTER-DEFENDANTS OF THE LIBERTY CITY CHURCH OF CHRIST, AN INDEPENDENT—CONGREGATIONAL CHURCH BODY, HAVE THE UNILATERAL AUTHORITY TO TERMINATE THE SERVICES OF THE MINISTER, DEFENDANT/COUNTER-PLAINTIFF CONTRARY TO THE EXPRESSED WISHES OF THE MAJORITY OFTHE MEMBERSHIP.

The heart of the dispute is whether the Elders, Plaintiffs/Counter-Defendants of the LIBERTY CITY CHURCH OF CHRIST have unilateral authority to terminate the services of the Minister, to wit, the Defendant/Counter-Plaintiff, not withstanding the wishes of the majority of the membership.

THE LIBERTY CITY CHURCH OF CHRIST is not governed by a "Mother Church" or a church of some higher older in the church hierarchy. The phrase "Church of Christ" represents a commonality between countless independent churches that recognize the doctrine taught by the New Testament of the "Church of Christ". The LIBERTY CITY CHURCH OF CHRIST is related to other members of the "Church of Christ" faith through associations, conventions and alliances, etc. Otherwise each church operates independently and as such can adopt its own operation

procedures provided they are consistent with the religious teaching of the Church of Christ. The Church of Christ and particularly the THE LIBERY CITY CHURCH OF CHRIST operates as a democracy, to wit: majortiy rules.

When a civil court is asked to travel down the delicate path that separates church from state, it must do so by applying neutral principles of law" has as its foundation the theory of "majority rule". The applications of this principle can be applied to a dispute of a minister's employment contractual right which is a property right.

In Waters v. Hargert, 593 S.W. 2nd 364 (Tex. 1980), the membership of a Texas Baptist Church was involved in a squabble over the retention of its pastor. In reaching its decision the court concluded,

> "Since the church was a congregational one, being completely automonous and governed by majority rule, and there was no hierarchical constitution or regulations governing right to contract, and no church adjudicatories having jurisdiction to determine questions concerning such contracts, controversy regarding pastor's alleged employment contract could be determined solely by application of neutral principles of law, i.e., by the civil court."

Cognizant of this principle of law, the court ordered a special meeting for the congregation to resolve the issues confronting the church. The same principle was expounded in Atkins v. Walker, 200 S.E. 2nd 641 (No. Car. 1973). The North Carolina court in Atkins was faced with a church dispute involving the tenure of its pastor. Recognizing who constitutes the governing body of a congregational and independent church, like the LIBERTY CITY CHURCH OF CHRIST, the court reasonable that a majority of the membership is entitled to control church property and direct and control the administraive affairs of the congregation.

As stated in the factual allegation of the subject motion, this court directed the officials to call a meeting of the membership following due notice to the members. Furthermore, the meeting held by the LIBERTY CITY CHURCH OF CHRIST on March 28, 1983 was memoralize by a stenographer. At the subject meeting a vote was called to the membership in which the following issues

were presented: (1) retention of MINISTER WYCHE as Minister an (2) dismissal of BLACK and WILLIAMS as Elders. The initial question was answered in the affirmative by an overwhelming majority of the membership,while the second issue was answered in the negative by a corresponding majority. In determining whether a pastor of an independenat congregational church was properly removed or retained as pastor as represented by a vote of the church's congregation, the court is limited to determining whether the majority votes to retain the pastor, Graham v. Lockhart, 256 S.E. 2d 518 (No. Car. 1979).

The First District Court of Appeals of Florida had the opportunity to review the very issue confronting this Court, Convington v. Bowear, 442 So.2d 1068 (1st DCA 1983). A Panama City Baptist membership (i.e., independent and congregational in nature) was split between the retention of its minister. At a regularly scheduled church business meeting the issue of the pastor's tenure was raised. A vote was called on the issue resulting in the majority favoring to terminate his services. The key question before the court was whether the vote to terminate the pastor was binding as action of the church. The church did not have any by-laws (i.e., nor does LIBERTY CITY CHURCH OF CHRIST) and was governed by church custom. The appellate court refused to disturb the trial court findings that the meeting was duly assembled according to custom. Inherit in the custom was that majority vote ruled and the minority faction must abide by its wishes.

In a suit by expelled members of the church seeking to oust newly elected trustees, the courts are not concerned with the articles of faith or various factions nor with questions of whether articles or faith or religious doctrines of the factions have been respected or observed; the only question to which the reviewing court addresses itself is in regard to the right to control church property. Partin v. Tucker, 172 So. 89 (1937). Where a schism develops in the membership of a church which is congregational in its structure like independent Baptist dominations and no trust is attached to the church assets, the assets belong to the majority and are subject to its control. Austin v. Mt. Zion Primitive Baptist Church of West Palm Beach, 165 So.2d 412 (2DCA 1964). The civil courts may not constitutionally delve into matters of an eccelesiastic nature, but they have the right and the duty of applying and en-

forcing sterile principles of property law. New Magnolia Baptist Church, Inc. of Branford v. Ellerker, 353 So.2d 204 (IDCA 1977).

The case of Partin v. Tucker, 172 So. 89, 126 Fla. 817 (1973) is a leading authority in the instant case. In that case, expelled trustees sought declaratory relief adjudicating that an election of subsequent trustees by a majority vote of the congregation was void, that the subsequent trustees had no right to use or manage church property, that such right was vested solely in the expelled trustees and that the expelled trustees be reinstated in the church. In reversing the lower court which had granted plaintiffs/appellees prayer, the Florida Supreme Court relying on a number of state decisions in agreement, held as follows:

It appears to us that it must be conceded (1) that when a religious congregation . . . .at a regular conference meeting... expels members, that action is final and the courts cannot interfere to reinstate them, or to vest them with any power of control of church property; (2) that before trustees, or their orderly successors, may be deprived of the use and control for the purposes of the religious organization..., it must be shown that they have diverted the property to uses other than those contemplated in this acquisition and that such diversion will not result from a change adopted as to some articles of faith while the congregation adheres to the fundamental principles of Christian religious originally espoused.

At P. 93 (Omissions Mine).

Based upon this holding, the court reversed the circuit court's decree for plaintiffs/appellees stating that the record was devoid of evidence that the fundamental principles of he Christian religion had been abandoned by the congregation, that the record did affirmatively show that at a regular conference meeting of the church the plaintiffs/appellee had been expelled from the church and, therefore, had no rights "in the affairs of that church which can be adjudicated in the civil courts".

The LIBERTY CITY CHURCH OF CHRIST membership does not differ from the churches cited herein. The Liberty City membership administrative decision are expressed through the majority of the members. The membership by an unquestionable majority voted to oust MANNIE BLACK and MOSES WILLIAMS as Elders and to retain MINISTER FREEMAN WYCHE as Minister at its regular Tuesday weekly meeting of March 7, 1983 and at the Court Ordered Meeting of March 28, 1983. The ques-

tion of who should let the LIBERTY CITY CHURCH OF CHRIST was properly left to the members of the church and not to the unilateral decision of the Elders.

WHEREFORE, the Defendant/Counter-Plaintiff, MINISTER FREEMAN T. WYCHE respectfully request that this Court finds as a matter of law and fact the following:

(1)That MINISTER FREEMAN T. WYCHE is the Minister to the LIBERTY CITY CHURCH OF CHRIST.

(2)That MANNIE BLACK and MOSES WILLIAMS are no longer Elders of the LIBERTY CITY CHURCH OF CHRIST.

(3)That MINISTER FREEMAN T. WYCHE and family are in legal possession of the church owned property currently in their possession and in their possession at the time of the action herein was commenced to wit: real proeprty at 1263 N.W. 67 Street, Miami, Florida and 2406 N.W. 67 Street, Miami, Florida.

(4)That the Court enter a summary Judgement against the Plaintiffs/Counter-Defendants, MANNIE BLACK and MOSES WILLIAMS and dismiss their Complaint with prejudice.

Respectfully submitted,

LAW OFFICES
McCRARY AND VALENTINE

BY _____

MARK A. VALENTINE, ESQ.
Attorney for Defendant/Counter-Plaintiff
3050 Biscayne Boulevard
Suite 800
Miami, Florida 33137-4198
(305) 576-1500

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion for Summary judgement was mailed to: ELLIS RUBIN, ESQ., 265 N.E. 26 Terrace, Miami, Florida 33137 this day of October, 1984.

BY _____

MARK A. VALENTINE, ESQ.

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NUMBER: 83-11427

MANNIE BLACK
and
MOSES WILLIAMS,
Plaintiffs
Counter-Defendants,

and

ROOSEVELT WALKER,
Counter-Defendent,

vs.

MINISTER FREEMAN T. WYCHE,
Defendant
Counter-Plaintiff.

ADMENDMENT TO MOTION FOR SUMMARY JUDGEMENT

Fla. Bar no. 295231

COMES NOW, the Defendant/Counter-Plantiff, MINISTER FREEMAN T. WYCHE, by and through his undersigned Counsel and files this is Amendment to Motion for Summary Judgement and states:

(1) That the original Motion for Summary Judgement is incorporated herein by reference and made a part herein except as amended herein.

(2) Paragraph number one (1) UNDISPUTED FACTS, is amended to read as follows:

"The Defendant/Counter-Plaintiff, Minister Freeman T. Wyche, has served as Minister of the Liberty City Church of Christ since approximately March 1978."

WHEREFORE, the Defendant/Counter-Plaintiff, MINISTER FREEMAN T. WYCHE respectfully request that this Court finds as a matter of law and fact the following:

(1) That MINISTER FREEMAN T. WYCHE is the Minister of the LIBERTY CITY CHURCH OF CHRIST.

(2) That MANNIE BLACK and MOSES WILLIAMS are no longer Elders of the LIBERTY CITY CHURCH OF CHRIST.

(3) That MINISTER FREEMAN T. WYCHE and family are in legal possession of the church owned property currently in their possession and in their possession at the time of the action herein was commenced to wit: real property at 1263 N.W. 67 Street, Miami, Florida and 2406 N.W. 67 Street, Miami, Florida

(4)That the Court enter a summary Judgement against the Plaintiffs/Counter-Defendants, MANNIE BLACK and MOSES WILLIAMS and dismiss their Complaint with prejudice.

Respectfully submitted,

LAW OFFICES
McCRARY AND VALENTINE

BY _____

MARK A. VALENTINE, ESQ.
Attorney for Defendant/Counter-Plaintiff
3050 Biscayne Boulevard
Suite 800
Miami, Florida 33137-4198
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BY _____

MARK A. VALENTINE, ESQ.